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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network)	
Information and Other Customer)	
Information)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguard of Sections 271 and 272)	
Of the Communications Act of)	
1934, as Amended)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BELLSOUTH OPPOSITION AND COMMENTS

BellSouth Corporation ("BellSouth") hereby responds to the Petition for Further Reconsideration ("Petition") filed by MCI WorldCom, Inc. ("MCI WorldCom") with respect to the Commission's *Reconsideration Order*¹ in the above proceeding.

I. The Commission Should Not Adopt MCI WorldCom's Proposal For Relaxed Approval Processes On Outbound Cold Calls To Prospective Customers.

MCI WorldCom asks the Commission to modify its *Reconsideration Order* to recognize an extremely abbreviated notice and consent process as a sufficient form of customer approval for a prospective carrier to access the CPNI of another carrier's customer.

¹ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket No. 96-115, CC Docket No. 96-149, *Order on Reconsideration and Petitions for Forbearance*, FCC 99-223 (released September 3, 1999) ("*Reconsideration Order*").

BellSouth believes that MCI WorldCom's proposal offers inadequate protection of customer privacy expectations because the entity asking for the approval does not already have an established service relationship with the affected customer. Nevertheless, if the Commission does take steps in the direction requested by MCI WorldCom, the Commission must ensure that a prospective carrier's opportunity to obtain approval from the customer of another carrier "during a marketing conversation" is not easier than the current provider's opportunity to obtain approval from its own customer for "out-of-bucket" marketing during similar conversations. Finally, the Commission must also ensure that if competing carriers in local exchange markets are permitted to utilize a simplified approval process to obtain CPNI from the current local service provider, new entrants in interexchange or other telecommunications markets should also be permitted to utilize the same simplified approval process to obtain CPNI from a customer's current service provider in those markets.

MCI WorldCom contends that it should be permitted to utilize a singular question, *e.g.*, "May I [view/access] your customer service record?,"² to obtain CPNI approval from customers of other carriers on cold calls to those customers,³ even before the customer has made any decision to establish a service relationship with MCI WorldCom. MCI WorldCom argues that "approval" obtained in this manner does not infringe customers' privacy expectations because it facilitates MCI WorldCom's ability to make its sales pitch, thereby providing the customer an improved opportunity to make an informed choice. Of course, the Commission has already concluded that a current carrier's "disclosure of CPNI to a different carrier to initiate service *without* customer approval for that disclosure would [not] be contemplated by a customer as a

² Petition at 5, 9.

³ MCI WorldCom represents that such cold calling/outbound telemarketing generates the majority of its local service sales. Petition, Lichtenberg Affidavit at II.

carrier's use of his or her CPNI within the existing customer-carrier relationship.”⁴ The question, then, is whether a positive response to a minimalistic solicitation such as that proposed by MCI WorldCom would constitute sufficient “approval” to overcome a customer's expectation that his or her present carrier will not be disclosing CPNI to a different carrier. BellSouth submits that MCI WorldCom's proposal is insufficient for that purpose.

In contrast to MCI WorldCom's generalized representation that customers expect new carriers, with whom the customers have no existing service relationship, to have access to the customers' CPNI with their present carriers,⁵ the record in this proceeding includes documentary evidence that customers are wary of giving CPNI approval on cold calls even by carriers with whom customers *do* have an existing relationship.⁶ Moreover, with the well-publicized slamming and cramming abuses by MCI WorldCom and others, one is hard-pressed to believe that customers expect their current carriers to freely disclose their CPNI to other carriers on the basis of such a seemingly innocuous question posed in the middle of a “marketing conversation.” Indeed, it is more likely that customers expect their current carriers to be more protective of their CPNI against disclosure to third parties consistent with the current carrier's obligations to protect that information under sections 222(a) and 222(c)(1).

Nevertheless, if the Commission does take steps to ease the approval process in the circumstances advocated by MCI WorldCom, the Commission must ensure that its actions do not result in carriers with whom a customer does not have an existing relationship having *easier*

⁴ *Reconsideration Order* at ¶ 89 (emphasis in original).

⁵ Petition at 8.

⁶ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As*

means of obtaining CPNI approval than customers' existing carriers have for obtaining approval for "out-of-bucket" use. Thus, if the Commission adopts MCI WorldCom's proposal, it must confirm that present carriers, too, may use the same simplistic request for approval on outbound calls to their own customers. Similarly, the result should not establish an approval standard for outbound cold calls by prospective carriers that is *lower* than that which is acceptable on inbound calls by customers to their existing carriers under section 222(d)(3).⁷ To conclude otherwise would stand on its head the whole structure of approval processes based on customers' expectations arising from their existing relationships with their carriers.

Finally, if the Commission adopts MCI WorldCom's proposal, it should also confirm that the same approval process would be appropriate for carriers prospecting for new customers in long distance or other telecommunications markets. The same rationale MCI WorldCom presents in support of its proposal applies with equal weight in all of these circumstances. Customers would be no less desirous of a prospective carrier gaining access to CPNI from a current carrier to facilitate long distance rate plan comparisons, for example, or of an incumbent LEC trying to regain a lost customer by making the same type of service and price comparison MCI WorldCom proposes to provide, than they would be interested in *any* prospective local exchange carrier being able to provide similar comparisons. Moreover, the Commission has

Amended, CC Docket No. 96-115, CC Docket No. 96-149. *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061, 8138-40 ("CPNI Order").

⁷ In this respect, BellSouth agrees with MCI WorldCom that the requirements of the notification and solicitation process imposed by the Commission on inbound calls are overly rigid and confusing to customers. Accordingly, more flexibility is clearly warranted on inbound calls to existing carriers regardless of the Commission's disposal of MCI WorldCom's request with respect to cold calls by prospective carriers.

repeatedly determined that section 222 applies equally to all carriers.⁸ Accordingly, if the Commission grants MCI WorldCom the relief it seeks, it must also extend that same approval process flexibility to carriers seeking new or return customers in local, long distance, or any other telecommunications markets.⁹

II. PIC Freeze Information Is Appropriately Considered To Be CPNI

MCI WorldCom erroneously asserts that PIC freeze information is not CPNI, claiming that such information fails to meet the statutory definition of CPNI.¹⁰ To the contrary, PIC freeze information falls squarely within that definition.

Specifically, PIC freeze information “relates to... the technical configuration... of a telecommunications service” as provided in section 222(f)(1)(A). PIC data indicates to an originating LEC the IXC to whose trunks a call is to be routed on an end user’s 1+ call. Hence,

⁸ *CPNI Order*, 13 FCC Rcd at 8098-99; *Reconsideration Order* at ¶ 11.

⁹ The Commission should reject MCI WorldCom’s request that it declare in advance that a carrier’s refusal to disclose CPNI to another carrier on the second carrier’s mere representation that a customer has approved such disclosure would violate section 201(b), 202(a), or 251(c)(3) or (4). Carriers in possession of CPNI have affirmative obligations under sections 222(a) and 222(c)(1) to protect that information from improper disclosure. In many cases, a prospective carrier’s mere representation that a customer has approved disclosure may provide insufficient grounds for the current carrier to breach its duty to its customers; greater assurances may be required. Resolution of the conditions under which a current carrier must disclose CPNI to another carrier will best occur in the context of individual facts and circumstances in a complaint proceeding or through negotiations between carriers. Because individual circumstances will differ, the Commission cannot make the declaration MCI WorldCom asks of it.

¹⁰ CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term “customer proprietary network information” means—(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. 47 U.S.C. § 222(f)(1).

PIC data indicates the appropriate technical configuration of that call. PIC freeze data “relates to” that technical configuration information by providing assurance to the customer that such configuration will not change without the customer’s express approval. Thus, PIC freeze information easily meets the definition of CPNI.

III. Winback And Retention Efforts In Compliance With The *Reconsideration Order* Should Not Be Deemed Presumptively Unlawful.

The Commission has clearly established that carriers may use CPNI in winback campaigns to regain customers who have switched to another carrier.¹¹ Further, the Commission has also determined that section 222(b) is not violated when a carrier attempts to retain a customer after the carrier learns independently from its retail operations that the customer is switching to another carrier.¹² MCI WorldCom’s request that the Commission adopt a presumption that *any* winback or retention efforts undertaken before the new carrier has actually begun providing service are unlawful is at odds with these clear Commission decisions.

As the Commission observed “[w]inback facilitates direct competition on price and other terms, for example, by encouraging carriers to ‘out bid’ each other for a customer’s business, enabling the customer to select the carrier that best suits the customer’s needs.”¹³ MCI WorldCom’s suggestion that *any* winback or retention effort, including those based on information learned through the carrier’s retail operations, be deemed presumptively unlawful would deprive customers of these pro-consumer, pro-competition benefits. The Commission’s rules already establish the appropriate parameters of winback and retention programs and no presumptions of unlawfulness are necessary.

¹¹ *Reconsideration Order* at ¶ 68.

¹² *Reconsideration Order* at ¶ 79.

¹³ *Reconsideration Order* at ¶ 69.

CONCLUSION

For the reasons and to the extent set forth herein, BellSouth urges the Commission to reject MCI WorldCom's Petition for Further Reconsideration.

Respectfully submitted,

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DATE: December 2, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 2nd day of December, 1999, served the following parties to this action with a copy of the foregoing **BELLSOUTH CORPORATION'S OPPOSITION AND COMMENTS TO MCI WORLDCOM'S PETITION FOR FURTHER RECONSIDERATION**, reference CC Docket No. 99-115 and CC Docket No. 96-149, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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*** VIA HAND DELIVERY**